IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 30 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAMESHCHANDRA R TALATI

Appearance:

1. INCOME TAX REFERENCE No. 30 of 1991

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our

opinion in respect of the assessment year 1982-83:-

"1. Whether, the Appellate Tribunal is right in law and on facts in holding that capital gain on sale of Boring House property was not taxable in the hands of the assessee?

2. Whether, the Appellate Tribunal is right in law and on facts in holding that capital gains, if any, is taxable in the hands of the ultimate beneficiaries and not in the hands of the assessee?"

2. The respondent - assessee is a life tenant in respect of the trust property. There are other beneficiaries regarding the corpus. The property settled under the trust forming the corpus was sold on 21.10.1981 and there was certain capital gains resulting therefrom. The Income-tax Officer taxed these capital gains in the hands of the assessee - life tenant. The trust has not filed any return of income because according to the representative of the assessee before the Income-tax Officer, the income was not to be taxed in the hands of the assessee. The assessee's case was that the capital gains was not to be taxed in his hands and therefore no return was filed with the result that neither the trust nor the beneficiary had filed any return. However, in the appeal before the Appellate Assistant Commissioner, after observing that the assessee had not lost, transferred or extinguished any right by the sale of the property, held that the addition made on account of the capital gains should be deleted. The Tribunal dismissed the revenue's appeal after observing that the assessee's right to the income is not disturbed at all. The assessee is not entitled to any part of the corpus and capital gain is attached to the corpus and not to the income. The Tribunal also relied on the decision of this Court in Pallavi Mayor v. CIT (1981) 127 ITR 701. Hence this reference at the instance of the revenue.

3. We have heard Mr. Manish Bhatt, learned Standing Counsel for the petitioner - revenue. Though served, none appears for the respondent - assessee.

4. At the hearing of the reference today, our attention is drawn to the decision of this Court in Pallavi Mayor's case (supra) wherein this Court observed that capital gains received by the trustees were not assessable in the hands of the assessee. The mere fact that the trustees were to hold the corpus of the trust

for the benefit of the assessee and in the absence of the assessee for those beneficiaries who had been specified in the trust deed, would not mean that merely because it might fall under the definition of 'income" under the Income-tax Act, accretions to such corpus would be virtually an income received by the trustees specifically on behalf of, or for the benefit of, the assessee.

In view of the fact that the assessee in the present case is also a beneficiary, having right to life tenancy in respect of the trust property, the ratio of the aforesaid decision would squarely apply and therefore we answer question No.1 in the affirmative i.e., in favour of the assessee and against the revenue.

5. As far as question No.2 is concerned, it does not seem to be correctly worded because the Tribunal has not held that the capital gains is taxable in the hands of the ultimate beneficiaries and not in the hands of the assessee who is a life tenant. Of course, the judgment of the Tribunal is capable of being read as laying down that capital gains is taxable in the hands of the trustees and therefore ultimately it is an income taxable in the hands of the beneficiaries. However, in view of the manner in which the question is couched, we decline to answer question No.2 as even otherwise the controversy raised is already covered by question No.1 which we have answered in favour of the assessee and against the revenue.

Ther reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)